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BOURQUE & ASSOCIATES, P.A.  
Suite 303  
835 Hanover Street  
Manchester, NH 03104

EXAMINER

ROSENBERG, LAURA B

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/774,351

Applicant(s)

DODGE, DAVID

Examiner

Laura B Rosenberg

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3,4,7,8,15,16,19-28,31-36,39,40 and 42-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,4,7,8,15,16,19-28,31-36,39,40 and 42-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This office action is in response to the amendment filed on 26 July 2004, in which claims 3, 4, 16, 22, 36, 39, and 43 were amended and claim 41 was canceled.

#### ***Claim Objections***

2. Claim 42 is objected to because of the following informalities: claim 42 depends from canceled claim 41. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 16, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4, 16, and 22 recite the limitation "the base plate" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claims. For the purposes of examination, the examiner assumes that "the base plate" is the static plate.

5. Claims 43 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to claim 43, it is unclear how the plate can be statically mounted to the ski and also have a first pivot means to pivotally attach the plate to the ski. The applicant should avoid entering new matter.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Pascal et al. (4,679,815). In regards to claim 43, Pascal et al. disclose a binding (#1, 3-5) for mounting a ski boot (#7) to a ski (#2), the binding comprising a plate (#1) over which the ski boot may be placed (best seen in figure 1), a first pivot means (#3) to pivotally attach the plate to the ski, a toe holding means (#4) having a toe holding surface (#29), and a second pivot means (including #37) to pivotally attach the toe holding means to the plate, wherein the second pivot means is located at the toe holding surface (best seen in figures 1-3).

In regards to claim 44, Pascal et al. disclose a heel holding means (#5) and third pivot means (#24 or 26) to pivotally attach the heel holding means on the plate (best seen in figure 1).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 4, 7, 8, 15, 16, 19-28, 31-36, 39, 40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peyre (5,044,656) in view of Meiselman (5,636,455). In regards to claims 3, 4, 15, 16, 22, and 39, Peyre discloses a ski binding (best seen in figures 4, 5, 9) for use with a ski or ski board (#11) comprising a rigid static base plate (#12, 17) capable of being attached to the ski or ski board (via #13, 18) in a central portion of the base plate (best seen in figures 1, 9), a top plate (#21) pivotally attached to the static plate (via #18', 36), "biasing means" (#24, 26, 28) for biasing the top plate towards a predetermined position, a toe holding means (#43) connected to the top plate (via a pin that is not labeled; best seen in figure 4) so that lateral force applied to the toe holding means is transferred to the top plate, a heel holding means (#40) mounted on the top plate, and a first pivot means (recess #23) located between the center and the toe holding means (best seen in figure 9), adapted to allow the top plate to pivot "around the first pivot means" (best seen in figure 9). Peyre does not specifically disclose the toe holding means (#43) pivotally/translatably connected to the top plate or a toe release means. Meiselman teaches a ski binding (#40) for use with a ski or ski board (#50) comprising a static plate (#54) capable of being attached to the ski or ski board in a central portion of the base plate (best seen in figure 1), a top plate (including #41, 53) pivotally attached to the static plate, a toe holding means (including #42, 44) pivotally/translatably connected to the top plate so that lateral force applied to the toe holding means is transferred to the top plate, and having a toe release means (#4) which can release when the toe holding means pivots. It would have been obvious to one skilled in the art at the time that the invention was made to modify the ski binding

of Peyre such that it comprised a toe holding means pivotally/translatably connected to the top plate and toe release means as claimed in view of the teachings of Meiselman so as to releasably secure the toe portion of the boot to the binding (Meiselman: column 1, lines 50-51; column 2, lines 58-65).

In regards to claims 7, 8, 19, and 20, Peyre discloses the "biasing means" comprising a first cam (#24).

In regards to claims 21 and 42, Peyre discloses a heel holding means (#40) pivotally connected on the top plate (via a pin that is not labeled; best seen in figure 4) so that a lateral force applied to the heel holding means is transferred to the top plate, which will cause the heel holding means to pivot (the heel holding means would release the heel of a boot when the heel holding means pivots).

In regards to claims 23, 24, 31, and 32, Peyre discloses the "biasing means" comprising a second cam (#24).

In regards to claims 25, 26, 33, 34, Peyre discloses the first cam comprising a first bias which cooperates with the top plate and the second cam comprising a second bias which cooperates with the top plate, the first bias being different than the second bias. Specifically, each spring (#28) of each cam can be adjusted with an adjusting screws (#51) to create a different bias for each cam.

In regards to claims 27, 28, 35, and 36, Peyre discloses the first cam comprising a cam follower (#26), a first cam surface (surfaces of #26 in contact with #52 and #11 in figure 1) on which the cam follower may travel if a lateral force having a first direction is applied thereon, and a second cam surface (surfaces of #26 in contact with #52 and

#11 in figure 6) on which the cam follower may travel if a lateral force having a second direction is applied thereon.

In regards to claim 40, Peyre discloses a second pivot means (#23) located between the center and the heel holding means (best seen in figure 9), adapted to allow the top plate to pivot "around: the second pivot means (best seen in figure 9).

### ***Response to Arguments***

10. In regard to claims 43 and 44, applicant's arguments filed 26 July 2004 have been fully considered but they are not persuasive. Specifically, the amendment to claim 43 makes it unclear if the applicant intended for the plate to be statically or pivotally mounted to the ski. Thus, the examiner has referred to the previously submitted claim 43 when applying a prior art rejection.

11. Applicant's arguments with respect to claims 3, 4, 7, 8, 15, 16, 19-28, 31-36, 39, 40, and 42 have been considered but are moot in view of the new ground(s) of rejection.


### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Caron et al. disclose a ski binding including toe and heel holding means and toe release means.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B Rosenberg whose telephone number is (703) 305-3135. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Laura B Rosenberg  
Patent Examiner  
Art Unit 3616

LBR

  
PAUL N. DICKSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600